

The Double Role Model of National Police in Handling Conflict

Suparmin

University of Wahid Hasyim, Law Faculty
X/22 Menoreh Tengah Street, Sampangan, Semarang 50236, Indonesia
dr_suparmin@yahoo.com

Abstract—It is undeniably that the National Police has mandate to create a harmonious and peace social atmosphere. Moreover Indonesia is multicultural country: ethnic, language, religion, and culture. It sometimes becomes a trigger of communal conflicts. Having this a vital role, the National Police tries to maximize its role to prevent the grass-root conflict and more importantly to maintain the national stability. This study is basically aimed to analyze the National Police's important role in resolving the conflict especially, political conflict between supporters of political parties. Recently, this conflict has caused serious problems either politically, socially and even economically. By using the double role model, the National Police will in turn be able to resolve all kinds of conflict in peace and harmony.

Keywords: conflict, role model, national police, harmony

I. Introduction

The role of National Police in resolving the political conflict between supporters of political parties implies, that the settlement pattern constructed by the National Police not only oriented on the aspects prosecute and punish, but also strive to create a social atmosphere that is safe and peaceful, as referred in *Pancasila* (Five Principles) as the source of all sources of the country law is in accordance with soul and spirit of the Preamble to the Constitution Republic of Indonesia Year 1945; Settlement based reconciliation seems more inspired by the police paradigm that is a partnership, namely the paradigm "cold-handed to society" (the soft hand of society).

Such a police paradigm slowly and surely begin to compensate the presence of the police paradigm "iron-handed to society" (the strong hand of society) are already classics and repressive. Paradigm of the soft hand in society more displays the police in alignment or partnership level, where the police and society are in the same direction or in an equality relationship that is horizontal. The role played by the police in the paradigm of the soft hand of society is enforcer justice of society in charge of nurturing, protecting, guiding and serving the society.¹

In contrast to police paradigm the soft hand of society, then police paradigm the strong hand of society, more emphasis on the power and given some authorities by law that are not owned by other institutions such as capturing, searching, detaining, seizing, ordering to stop, banning leaving the scene, etc. Police and society relations in this case are "top-down" or hierarchical, where the police is in force position, while the society is obligated to obey.

Awaloedin Djamin as quoted by Satjipto Rahardjo stated, that in fact, if calculated as a percentage, the work is less repressive than preventive and smaller when compared with the preemptive. However, sometimes we perceive it less true to such extensive police work with more emphasis repressive police work.²

¹ Examples of police duties with paradigms a soft hand of society is to help resolve disputes between citizens, build the order, prevent and control the growth of society's diseases, maintain the safety both body and soul as well as property (Satjipto Rahardjo, "Membangun Polisi Indonesia Baru: POLRI dalam Era Pasca-ABRI" the Papers of Indonesian Police National Seminar III on Independent Civil National Police, Empowered and Provisional to Ensure Integrity of Nations. Organized by the Centre for Police Studies Faculty of Law, Diponegoro University, Semarang, October 22 to 23, 1998, pages 5-6. Also in Satjipto Rahardjo Polisi Sipil dalam Perubahan Sosial di Indonesia. Jakarta: Publishers Buku Kompas, 2002, pages 41-42

²Awaloedin Djamin, *Beberapa Masalah dalam Kepolisian Negara Republik Indonesia*, 1986, in Satjipto Rahardjo, *Op Cit*; 1998, Page 6. also in Satjipto Rahardjo, 2002, page 41.

2. Discussion

The role and strategy of the National Police in conflict resolution by optimizing the integration of roles and reconciliation-oriented, it has a very strong relationship with several moral messages as can be seen in some of the verses of Al-Quran as follow:

➤ QS. Al Hujurat verse 10 reads:

"Innamal mu'minuuna ikhwatun fa ashlihuu baina akhawaikum wat taquulaaha la'allakum turhanum". The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy

➤ QS. Ali Imran verse 104 reads:

"Waltakum minkum umma-tuyyad'uuna ilalkhoiri waya'muruuna bil ma'ruifi wayanhauna'anil munkari, waula aika humul muflihuuna", And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful.

➤ QS. Ali Imran verse 159 reads:

So by mercy from Allah, [O Muhammad], you were lenient with them. And if you had been rude [in speech] and harsh in heart, they would have disbanded from about you. So pardon them and ask forgiveness for them and consult them in the matter. And when you have decided, then rely upon Allah. Indeed, Allah loves those who rely [upon Him].

➤ QS. Al Hujurat verse 9 sounds :

And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly.

➤ Reconcile those (who fight) was a prophetic science branches, while disintegrating human beings is one of the witchcraft branches³.

Narrated from the Prophet, He said:

"The greatest reward in the sight of Allah Almighty on the Day of Judgment is the man who most beneficial for our fellow human beings when in the world, and those who later on the Day of Judgment is close to Allah are those who reconcile between people who fight"

➤ Relationship with Christianity conflict management based on "love" where the sense that God himself is love. Because love can conquer all, and there are no laws against love. In Matthew chapter 18: verses 15-17; Verse 15 If your brother sins, rebuke him under four eyes. If he hears you, you have to get back. Verse 16 And if he will not listen to you take one or two more, so on the testimony of one or two witnesses, the case was not in doubt⁴.

➤ Do not punish and you will not be punished, so forgive, and you will be forgiven (Luke chapter 6th paragraph (3).

➤ International Instruments "Article 33 of Appendix I Chapter VI the United Nations Paragraph (1) The parties involved in an ongoing dispute which might endanger the maintenance of international peace and security must seek a solution by way of negotiation, inquiry, mediation, arbitration, settlement according to law through agencies or local approval or by other peaceful means of their own selected"⁵.

Way of resolving problems of social conflict is important, firstly "look at what God has done as a source of peace". That is the way of conflict resolution begins with positive thinking, so that no negative thoughts arise to finish, so that God himself will participate in the settlement of conflict (crime clearance)⁶.

Article 38 Paragraph (2) letter e Jo Article 60 of Law Number 48 Year 2009 on Judicial Authority 'functions related to the judicial authority includes (a) inquiry and investigation; (b) the

³ Al-FaqihAbullaits As-Samarqandi, 1999, *Tanbihul Ghafilin Nasehat Bagi Yang Lalai, Pustaka Aman 2, Jakarta, (hal: 366) dan Mencegah Permusuhan (page: 367)*

⁴Suparmin, 2012, *Model Polisi Pendamai Dari Perspektif Alternative Dispute Resolution (ADR) (Studi Penyelesaian Konflik antar Partai Politik)*, Publishers Agency Diponegoro University in collaboration with Wahid Hasyim university Press, Semarang, page : 68

⁵Suparmin, 2012, page 72-73 quoted Hadi Setya Tunggal, 2000 : 113 and 124.

⁶Suparmin, 2012, page 69.

prosecution; (c) the implementation of the decision; (d) the provision of legal services; and (e) the settlement of disputes outside the courts; and the settlement of disputes through alternative dispute resolution outside the court that the results stated in a written agreement, shall be final and binding on the parties to implement in good intention⁷.

With the opportunity for the police to seek peace or reconciliation for supporters of rival political parties in the political process, then in truth indirectly police are doing discretion that the authority given by law (to the police) to act in special circumstances in accordance with the assessment of agency or officer.⁸

Departing from the view of the experts regarding discretion, Indarti then formulated a police discretion terminology as:

Independence and / or police authorities to make decisions and then take action as deemed proper / appropriate to the faced circumstances, which is done wisely and with due regard to all the considerations and options that allow ".⁹

Legally, steps taken by the police outside the provision of positive law in the resolution of political conflicts can be justified, as in Article 5 paragraph (1) letter (a) number 4 yo Article 7, paragraph (1) letter (j) of the Criminal Procedure Code (KUHP) confirms, that "police as examiners and investigators can hold another action according to the law responsible ".¹⁰

According to the Criminal Procedure Code, "other actions" committed by the police must be based on several important requirements, namely: (1) does not conflict with a rule of law; (2) conform with the legal obligation requiring an act of position; (3) consideration of the action to be appropriate and reasonable, and included in his position; (4) On the basis of eligible force condition; and (5) respect for human rights.

In addition, the term " force condition" or "very necessary condition" in an action discretion, Marcus Lukman as quoted by Saut P. Panjaitan, confirmed a number of criteria that should be used as standard, namely: (1) issues appears to be of public interest, such as the nation interests, the common people interests as well as the development interests; (2) the emergence of these problems suddenly, are outside the specified plan; (3) to resolve the issue, the legislation has not been set or just set in general, so that the state administration have the freedom to complete on their own initiative;(4) the procedure cannot be completed in accordance with the normal administration, or if completed under normal administrative procedures are less efficient and effective; and (5) if the issue is not resolved quickly, it will cause harm to the public interest.

When it is looked more closely, actually the pattern of conflict resolution among the supporters political parties tend to open space up for the police to carry out such discretion, seem to have in common with the model of restorative justice as initiated by Braithwaite (1989). Such a model is promising justice for settling disputes (conflict) more humane, because this model shifts the value of philosophical handling of cases of punishment to reconciliation, retaliation to offenders to healing the victim, exile and violence towards participation and kinship society overall, negative destructive towards improvement, a pardon is loaded with lot of love. Such law enforcement philosophy that seeks to encompass human feelings recognition widely, including the repair and healing, forgiveness, compassion and reconciliation, including sanctions, if it is necessary.¹¹

Reorientation of National Police's role in conflict resolution as described above also shows that the pattern of conflict resolution are constructed by the police goes beyond judicial conventional pattern which is more repressive as developed in liberal culture. The liberal justice in the criminal

⁷Law Number 48 Year 2009 concerning Judicial Authority.

⁸Walker S., *The Police in America*. New York: McGraw-Hill, 1983, page 54.

⁹Conjunctive and / or is used here to indicate that the real independence is distinguished from - and can stand alone without - the authority. However, it will be more solid and complete when independence of action combined with - and reinforced by - authorities (Erlyn Indarti. *Diskresi Polisi*. Semarang: Publishers Agency Diponegoro University, 2000, page12-13.

¹⁰This discretionary authority is not only done by the police who carry out judicial proceedings as an examiner and the investigator, but can be done by any official Indonesian National Police (Kf. Explanation of Law No. 2 of 2002 on Indonesian National Police.

¹¹ John Braithwaite's thought as elaborated by Paulus Hadisuprpto. "Pemerian Malu Reintegratif" sebagai sarana Nonpenal Penanggulangan Perilaku Delinkuensi Anak: Studi Kasus di Semarang dan Surakarta", *Disertasi Program Doktor Ilmu Hukum*. Semarang: PDIH Undip, 2003, page 36-37.

jurisprudence literature patterned on the two versions of the criminal justice bureaucracy, which by Packer, called crime control models (CCM) and due process models (DPM).¹²

Crime control model is a version criminal justice based on the proposition that the eradication of criminal acts is an essential function of a judicial process. Such criminal justice orientation was intended to provide security and order to society. Therefore, the efficiency of the bureaucracy in recruiting as much as possible actors the crime, and the process of determining guilty and punishment were carried out as quickly as possible. As a logical consequence of the work efficiency of the procedural obstacles that hinder the criminal justice bureaucracy must be removed. That is why, the use of CCM in the implementation of the SPP using rolling workings from one stage to another without any obstacles as a "conveyor belt".¹³

Law enforcement officials who run the criminal justice bureaucracy by using CCM is always underestimate that the processed person is indeed guilty by applying the "presumption of guilty". The adoption of a presumption of guilty is intended that when in the early stages investigators already believed that the person is guilty, then the next stage of the examination is only considered a mere formality by other law enforcer. Extreme way of thinking by ignoring what is criticized by other parties, including the criticism delivered by legal counsel. That means, this way of thinking CCM does not want a second opinion in the process of criminal justice bureaucracy. Such a way of working tends to break things that are not justified by the ethics system to be implemented in the judicial bureaucracy.¹⁴

The foregoing description as well as providing specific characteristics of the CCM in the administration of justice, which emphasizes how to work efficiently and quickly in order to obtain recognition from the public. Such a way of working was actually based on the following principles: (1) repressive measures to a criminal offense is the most important function of a judicial process; (2) The main concern must be addressed to the efficiency of law enforcement for the selection of a suspect, assign guilt and guarantee or protect the rights of suspects in the judicial process; (3) criminal enforcement process should be carried out rapidly (speedy) and completely (finality); (4) follows the principle of presumption of guilty causes the system implemented efficiently; and (5) the law enforcement process should focus on the quality findings fact of the administrative, because of the accuracy of these findings will direct the trial into a release of the suspect from prosecution or allow the suspect's willingness to declare himself guilty (plead of guilty).¹⁵

Meanwhile, Due process models (DPM) is a version of criminal justice become opponents of the CCM, though both have a common goal to prevent and combat crime occurring in society. In contrast to the CCM, the judicial bureaucracy using DPM models allow for "barriers" to prevent a suspect brought to punishment. In such a context, then in every stage of the handling of suspects follow the principle "presumption of innocence". The presumption of innocence is a principle which signaled to the law enforcement officers to get rid of the principle of presumption of guilty from their mind and conscience to a person suspected or had committed a criminal act (factual guilty) clearly and evidently.¹⁶

It appears that the operation of the law through CCM and DPM models have the same orientation tendencies, which are equally orientated to the perpetrator, particularly by providing repression or retaliation with the hope the perpetrators not repeat his actions. Such views by Barda Nawawi Arief regarded outdated, because a policy of good enforcement of criminal law oriented at least four (4) main aspects of the protection of society, namely:

(1) The society needs protection to anti-social acts that harm and endanger the public. Starting from this aspect, it is natural that the criminal law enforcement aimed at crime prevention;

¹²Both models justice displayed by Packer is not something absolute, but rather is an attempt to provide operational guidance to the complexity of the underlying values of the law enforcement process. Such a categorization of criminal justice was actually done by Packer to abstract American society perspective on how a law can be walked or applied in criminal justice in America (Kf. Herbert L. Packer, *The Limits of the Criminal Sanction*. California: Stanford University Press, 1968, page 153-178. Also in Mardjono Reksodipoetro dan Sri Boediarti, "Sistem Peradilan Pidana", *Materi Perkuliahan Program Magister Ilmu Hukum Universitas Indonesia*, Jakarta, 1988.

¹³Mardjono Reksodipoetro dan Sri Boediarti, *Ibid.*, 1988.

¹⁴Mardjono Reksodipoetro dan Sri Boediarti, *Ibid.*, 1988.

¹⁵The principles of the CCM as elaborated by Romli Atmasasmita, *Sistem Peradilan Pidana, Perspektif Eksistensialisme dan Abolisionisme*. Bandung: Binacipta, 1996, page 19-20.

¹⁶Mardjono Reksodipoetro dan Sri Boediarti, *Ibid.*, 1988.

(2) The society needs protection to the harmful person. Therefore, it is natural that when a criminal law enforcement aimed at improving the offender or trying to change and influence its behavior in order to better comply with the law and be good citizens and useful;

(3) The society needs protection also to the abuse of sanctions or the reaction from law enforcement and from citizens in general. Therefore, it is reasonable thing if the enforcement of the criminal law should prevent the treatment or arbitrary action outside the law;

(4) The society needs the protection of the balance or alignment of the various interests and values are disturbed as a result from the crime. Therefore, it is reasonable thing when a criminal law enforcement should be able to resolve conflicts caused by a criminal act, restore balance, and bring a sense of peace in society.¹⁷

3. Suggestions

Such law enforcement orientation is in line with Muladi who believe that the criminal justice models suitable for Indonesia is a model which refers to *daad-dader-strafrecht* called "balance model of interests". This model is called the most realistic models, due attention to the various interests that must be protected by the criminal law, namely state interests, public interest, individuals interests, criminal interests, and crime victims interests. Either view of Barda Nawawi Arief or Muladi as described above showed a desire to overhaul the law enforcement orientation from the individualistic towards holistic, by taking also into communal or collective interests as well as the balance of values embraced by society.

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¹⁷Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti, 1998, page 12-14.